

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

SERTA SIMMONS BEDDING, LLC

and

Cases 04-CA-266838,  
04-CA-267718  
04-CA-268125

WILLIAM BEATO, JUAN SANTANA, AND  
SEVERINO FELIX, INDIVIDUALS

**Jun S. Bang, Melanie R. Bordelois, Christy Bergstresser and Nicholas Allen, Esqs.,**  
for the General Counsel.  
**R. Andrew Santillo, Esq. (Winebrake & Santillo, LLC),**  
for the Charging Party.  
**Brent L. Wilson, Esq. (Elarbee, Thompson, Sapp & Wilson, LLP),**  
for the Respondent.

DECISION

STATEMENT OF THE CASE

**ROBERT A. RINGLER, Administrative Law Judge.** This hearing was held over several days in June and September 2021. The complaint alleged, inter alia, that Serta Simmons Bedding, LLC (Serta) violated §8(a)(1) by threatening employees and firing 13 workers for seeking a raise. As will be explained, the complaint is meritorious. On the record, I make the following

FINDINGS OF FACT<sup>1</sup>

I. JURISDICTION

Serta manufactures and distributes bedding products. Annually, it sells and ships goods exceeding \$50,000 from the Hazleton, Pennsylvania plant (the plant) directly to points outside of Pennsylvania. It, as a result, engages in commerce under §2(2), (6), and (7) of the Act.

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<sup>1</sup> Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

## II. UNFAIR LABOR PRACTICES

### A. *Record Evidence*

5 The plant operates from Monday to Saturday.<sup>2</sup> It employs roughly 120 workers on the 1<sup>st</sup> shift (i.e., 6 a.m. to 5 p.m.) and 90 on the 2<sup>nd</sup> shift (i.e., 5 p.m. to 4:30 a.m.). It consists of these departments: quilting and bordering; mattress finishing; maintenance; box spring; coiling; receiving; and front office. About 75% of the plant's employees only speak Spanish. Serta holds new employee orientations in Spanish and English.

#### 1. Plant Closure due to COVID-19

15 In the spring of 2020,<sup>3</sup> the plant suspended operations and laid off its workforce in response to the pandemic. It restarted on June 1 and workers were recalled. (R. Exhs. 1-2).

#### 2. Start-Up Problems

20 Serta encountered start-up difficulties, when many of its workers rejected their recall offers. This prompted Serta to abruptly initiate plans to hire 120 new workers, which then prompted it to raise its starting wage rate in order to attract a sufficient pool of applicants.

#### 3. June 16 Meetings

25 Serta held employee meetings in the plant's parking lot to announce the new starting rate. HR Business Partner Sharon Lauck explained that Serta raised its starting rate to \$17 per hour in order to help its recruiting efforts. She added that any incumbents making less than \$17 per hour would be raised to that rate and anyone making more would receive up to \$.35 per hour more based upon service time. Her statements were translated into Spanish. Although these meetings went smoothly, employees became disgruntled upon realizing that the adjustment meant that many experienced workers and newly-hired workers were now receiving comparable pay.

#### 4. August 3 – Work Stoppage and Terminations

35 At 9 am, several 1<sup>st</sup> shift employees left their workstations during their shifts and sought out Operations Manager Charles Hoover in the office area to discuss their pay disparity concerns. Hoover, who was in a conference call, was unavailable, which resulted in the several dozen employees lingering in the office area, as they awaited a meeting.<sup>4</sup>

40 While employees waited for Hoover, HR Business Partner Lauck made an announcement at 9:10 a.m., which is the subject of a credibility dispute. Employee Yanira Rodriguez recalled

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<sup>2</sup> Employees work overtime on Saturdays. The plant is closed on Sundays.

<sup>3</sup> All dates that follow are in 2020, unless otherwise stated.

<sup>4</sup> This group totaled about 40 workers. (GC Exhs. 6-7).

Lauck telling the group to “go back to work or you are fired”<sup>5</sup> (tr. 155), while Lauck insisted that she said that employees, “need to clock out and go home or go back to work.”<sup>6</sup> (Tr. 545). It is undisputed, however, that Lauck’s comments prompted about 20 workers to return to work and the others to relocate to the cafeteria. For several reasons, I resolve the credibility dispute in favor of Rodriguez.<sup>7</sup>

While the 20 remaining workers waited in the cafeteria for Hoover, Serta took several actions. First, as other 1<sup>st</sup> shift workers began taking lunch breaks, management diverted them away from the cafeteria and asked them to eat in their cars, outside or in its bedding showroom. Second, at 11 a.m., Lauck instructed several supervisors to clock out the striking employees. See also (GC Exh. 2). Finally, at 11:15 am, Chief HR Officer Goldblatt, legal counsel, Regional VP Schnipke, Hoover, Lauck and others, held a conference call and decided to fire the workers.

After Serta decided to fire the workers, Hoover returned to the cafeteria to afford them a last chance to return to work. Production Manager Michael Kelly recounted Lauck announcing that employees would be in “trouble,” if they did not return to work. (Tr. 641). After 4 more employees relented and returned to work, Serta fired the remaining 13. (Tr. 108-109). Lauck confirmed that they were fired “for refusing to go back to work.”<sup>8</sup> (Tr. 108). They also received termination letters, which stated that, “your employment ... is being terminated effective August 3, 2020 for violation of refusal to return to work.” (GC Exh. 4). These employees were fired: Antolin Batista;<sup>9</sup> Antonio Basilio; William Beato; Wilson Bernard; Felisberto De La Cruz; Severino Felix; Roberto Perez; Felipe Polanco; Yanira Rodriguez; Juan Santana; Bolivar Valdiviezo; Andres Vasquez;<sup>10</sup> and Maximo Veloz.

At all relevant times, the employees were assembled peacefully. Video footage demonstrated that they were socially distanced and wore COVID-19 masks. (GC Exh. 16).<sup>11</sup>

## 5. Pennsylvania State Police and Worker Ejections

At 11:30 a.m., Serta contacted the Pennsylvania State Police and sought their assistance

<sup>5</sup> Employee William Beato corroborated her testimony. (Tr. 249). It is noteworthy that all of the Spanish-only speaking employees agreed that they all understood what “fired” meant, when spoken in English.

<sup>6</sup> Geury Hernandez, safety officer, corroborated Lauck’s testimony. (Tr. 607).

<sup>7</sup> Rodriguez was an open and believable witness. It is also plausible that the group would not have dispersed in the way that it did, in the absence of a threat.

<sup>8</sup> The parties stipulated that 13 employees were not fired on the basis of “any prior disciplinary record, attendance infraction, or work-related performance reason other than the events that occurred on August 3.” (JT Exh. 1). Lauck agreed that they were not fired because they were in the cafeteria for over 3 hours or for trespassing. (Tr. 113, 116). She confirmed that they had already been fired before Serta called the Police and that they “weren’t trespassing until they were terminated.” (Id.). She recapped that, “they were fired for refusing to go back to work after repeatedly being asked to go back to work.” (Tr. 113).

<sup>9</sup>The complaint lists him as Ariel Batista.

<sup>10</sup> The complaint identifies him as Andres Vazquez-Martinez.

<sup>11</sup> The work stoppage only interfered with production in the sense that 20% of the workforce on the 1<sup>st</sup> shift left their posts and caused 2 production lines to shut down. There is no evidence that the employees ever re-entered the work area, physically interfered with ongoing production or otherwise interfered with others performing their jobs.

with removing the workers. This resulted in the striking employees peacefully leaving the plant. The Police Report memorialized the incident:

I responded to the above location for an issue with 13 employees. Upon arrival ..., I spoke to Lauck who advised that 13 employees were asked to leave after they refused to return to work and were subsequently terminated. She related they wanted an increase in pay and would not leave.

Upon speaking to the individuals, they wanted to talk to someone about their wages and the company refused to talk to them. They were just told to go back to work or be terminated. Some employees did return to work, others did not. I then requested they leave the property which they did without incident.

No further action was taken, resumed patrol.

(GC Exh. 5).

#### 6. August 4 – Return to Work Offers

On August 4, terminated worker Beato, texted Regional VP Schnipke this message:

Ok 13 employees get terminated good workers if possible that's we come back tomorrow. We tried to help our coworkers who have worked in Simon for many years to make some decent money because we noticed how new worker would get paid the same or more. We didn't want to cause any problems. A lot of us need the job to pay bill and support our families. We want to go back to work. Is it possible that we can go back to work tomorrow or anytime soon? Thank you

(GC Exh. 11)(as stated in the original). On August 5, Schnipke replied, inter alia, that:

I received your text. Our position has not changed. You were offered an opportunity to quit your boycott and return to work. The consequences of not returning to work were explained, and you elected to continue to boycott rather than return to work. We followed through with terminations.

(Id.).

#### 7. August 5 – Lauck and Schnipke Emails

On August 5 at 9:55 am, Lauck sent this email to Schnipke:

The problem is if we bring them back we are setting a precedent that you can do this and we will bring you back. I know we do not want them all back can we actually pick and choose without repercussions. I need to talk with the team to see if we want to salvage any. Can I let you know tomorrow?

(GC Exh. 24). On the same date at 11:11 am, Schnipke emailed:

Talk with the team tomorrow and see if there is anyone you want to bring back. I'm going to text William today with a message that Clara wrote. Dana and I both said NO WAY to rehiring him.

(Id.)(emphasis as in original). On the same date at 3:24 pm, Lauck emailed back that:

We are all in agreement to William, my gut is saying no to all of them, I really don't want any more issues and if it isn't William one of them will pick up where he left off.

(Id.).

## 8. Reinstatement Offers

Serta eventually reconsidered its position and made unconditional offers of reinstatement to: Batista; Basilio; Bernard; De La Cruz; Perez; Rodriquez; Vasquez; and Veloz. (JT Exh. 1). On May 24, 2021, Batista, De La Cruz, Perez and Vasquez returned. (Id.). Beato, Santana, Valdiviezo, Severino and Polanco were not, however, offered reinstatement. (Tr. 369).

## 9. Workplace Grievance Policy

Serta maintained an open door policy, where employees could raise grievances with management and human resources, as well as a posted alert line procedure. (Tr. 177-78). Its Employee Handbook cited an in-house grievance procedure, open-door policy and alert line.<sup>12</sup> (R. Exh. 4). The Employee Handbook has English and Spanish versions. (Tr. 558).

### B. Analysis

#### 1. §8(a)(1) – Statements Regarding Work Stoppage<sup>13</sup>

Serta violated §8(a)(1), when Lauck threatened to fire employees, who did not return to work and end their work stoppage and, thereafter, told employees that they were fired because of the work stoppage. It is unlawful to threaten to fire workers for holding a protected work stoppage. See, e.g., *Noahs Ark Processors*, 370 NLRB No. 74 (2021); *Don Chavas, LLC*, 361 NLRB 101 (2014).

#### 2. §8(a)(1) – Terminations<sup>14</sup>

##### a. Legal Precedent

<sup>12</sup> This handbook is discussed at employee orientation and is available online.

<sup>13</sup> This allegation is pled under complaint ¶¶4 and 7.

<sup>14</sup> This allegation is pled under complaint ¶¶6 and 7.

In *Atlantic Scaffolding Co.*, 356 NLRB 835, 838 (2011), the Board held as follows:

Where ... employees are terminated for engaging in a protected concerted work  
 5 stoppage, *Wright Line* is not the appropriate analysis, as the existence of the  
 8(a)(1) violation does not turn on the employer's motive .... Rather, when the  
 conduct for which the employees are discharged constitutes protected concerted  
 activity, "the only issue is whether [that] conduct lost the protection of the Act  
 because ... [it] crossed over the line separating protected and unprotected  
 10 activity." *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. mem. 63  
 Fed.Appx. 524 (D.C. Cir. 2003).

In striking a balance between §7 and private property rights, the Board seeks to  
 accommodate both rights "with as little destruction of one as is consistent with the maintenance  
 of the other." *Wal-Mart Stores, Inc.*, 364 NLRB No. 118, slip op. at 3 (2016). It, thus, uses this  
 15 10-factor test to assess if work stoppages arising on an employer's property are protected:

- (1) reason for the work stoppage;
- (2) peacefulness of the stoppage;
- (3) interference with production, or depriving property access;<sup>15</sup>
- 20 (4) adequate opportunity to present grievances;
- (5) warning to vacate or be fired;
- (6) work stoppage duration;
- (7) employee representation and established grievance procedure;
- (8) remaining after shift's end;
- 25 (9) attempting to seize property; and
- (10) mass firing rationale.

*Quietflex Mfg., Inc.*, 344 NLRB 1055, 1056-1057 (2005).

### 30 *b. Analysis*

The *Quietflex* factors demonstrates that the work stoppage remained protected. Serta's  
 firing of the work stoppage employees, accordingly, violated the Act.

35 Regarding factor 1, the work stoppage protested Serta's wage policy. It was, as a result,  
 "concerted activity for the purpose of mutual aid or protection," which supports protection.  
*Walmart*, supra.

40 Regarding factor 2, the work stoppage was peaceful. Video evidence demonstrated that  
 employees were, at all times, peacefully gathered. This factor supports protection. Id.

Regarding factor 3, the work stoppage had no effect on production and only a de minimis

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<sup>15</sup> The disruption/ interference inquiry focuses on whether employees "interfere[d] with production or the provision  
 of services by preventing *other employees* who are working from performing their duties." See *Los Angeles Airport  
 Hilton Hotel & Towers*, 360 NLRB 1080, 1084 (2014), enfd. 789 F.3d 154 (D.C. Cir. 2015) (emphasis added).

effect on cafeteria access. Given that the work stoppage took place in the cafeteria, it did not prevent others from performing production duties. *Los Angeles Airport Hilton*, supra. And, although the work stoppage diverted some from eating lunch in the cafeteria, this interference was minor because the stoppage occurred during the pandemic (i.e., when employees often ate outside, in their cars and socially distanced in the cafeteria). In sum, because the work stoppage did not interfere with others' work and only had a minor impact on cafeteria usage, this factor still supports finding that it remained protected. *Walmart*, supra.

Regarding factor 4, this factor is neutral. Although Serta had an open door policy that provided a forum for grievances, this policy appeared to be limited to meeting with employees individually. Hoover, as noted, refused to meet with the group and Serta never otherwise stated that it would do so, even though the grievance was collective in nature. This factor, accordingly, is mixed, and neither supports nor detracts from protection. *Id.*

Regarding factor 5, employees were never told to depart the plant because they were deemed to be trespassers or risk termination. They were solely told to return to work or they would be fired, which is very different; notably, it is undisputed they were not even considered to be trespassers until after their firings.<sup>16</sup> This factor, as a result, further supports that the work stoppage remained protected. *Id.*

Regarding factor 6, the work stoppage lasted for about 150 minutes, i.e., from 9 am to 11:30 am. This duration exceeded the 88-minute protest, which was protected in *Walmart* as well as the 10-minute stoppage protected in *Santa Barbara News-Press*, 357 NLRB 452, 483 (2011), vacated on other grounds, 702 F.3d 51 (D.C. Cir. 2012). I find, as a result, that this factor mitigates against protection. See *Quietflex*, supra (12-hour work stoppage lost protection).

Regarding factor 7, this factor favors loss of protection. Although employees were not represented by a union, they still had access to the in-house grievance procedure.

Regarding factor 8, this factor favors protection. The work stoppage occurred squarely in the middle of the 1<sup>st</sup> shift (i.e., 6 a.m. to 5 p.m.), involved only 1<sup>st</sup> shift workers and did not extend to the 2<sup>nd</sup> shift.

Regarding factor 9, this factor also favors protection. The employees were, at all times, peaceful and respectful, and never attempted to seize Serta's property.

Regarding factor 10, Serta's rationale for the mass firing favors protection. Employees were expressly fired for refusing to go back to work (i.e., their §7 activity), as opposed to interfering with Serta's operations or its private property rights (i.e., trespassing).

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<sup>16</sup> Lauck told employees to "go back to work or you are fired" and explained that "they were fired for refusing to go back to work after repeatedly being asked to go back to work." (Tr. 113, 155). Serta memorialized its rationale in its termination letters, which cited, "refusal to return to work." (GC Exh. 4). Lauck agreed that employees were not fired for trespassing and "weren't trespassing until they were terminated." (Tr. 113, 116).

In sum, the *Quietflex* factors demonstrate that the work stoppage was protected. Serta, as a result, violated §8(a)(1), when it fired its employees for refusing to return to work. As noted, 7 of the 10 factors favor protection, 2 favor loss of protection and 1 is neutral. In making this finding, great reliance has been placed on the following: the work stoppage had a protected and  
 5 core §7 aim of protesting wages; employees were fired for refusing to go back to work during their shift (i.e., the §7 aim), as opposed to fired for trespassing; it was consistently peaceful and did not involve the seizure of the plant; and it occurred away from the plant floor and did not impede production. *Walmart*, supra.

### 10 3. §8(a)(1) – Police Removal<sup>17</sup>

Serta violated §8(a)(1), when Lauck asked the police to remove employees from the plant for refusing to return to work. As said, the employees were unlawfully fired and their police-based removal was based upon their protected activities. See *Meyer Tool, Inc.*, 366 NLRB No.  
 15 32 (2018); *Winkle Bus Co.*, 347 NLRB 1203, 1219 (2006).

### Conclusions of Law

1. Serta is an employer engaged in commerce within the meaning of §2(2), (6), and  
 20 (7) of the Act.

2. Serta violated §8(a)(1) by:

a. Threatening to fire employees for engaging in protected concerted  
 25 activities and, thereafter, informing them that they are fired because of their protected concerted activities.

b. Firing these 13 employees for engaging in protected concerted activities:  
 30 Antolin Batista;<sup>18</sup> Antonio Basilio; William Beato; Wilson Bernard; Felisberto De La Cruz; Severino Felix; Roberto Perez; Felipe Polanco; Yanira Rodriguez; Juan Santana; Bolivar Valdiviezo; Andres Vasquez;<sup>19</sup> and Maximo Veloz.

c. Summoning the police to have these employees removed from the plant  
 35 for engaging in protected concerted activities.

3. These unfair labor practices affect commerce within the meaning of §2(6) and (7).

### Remedy

40 The appropriate remedy for the violations found herein is an order requiring Serta to cease and desist from its unlawful conduct and to take certain affirmative action. Specifically, it must offer Batista, Basilio, Beato, Bernard, De La Cruz, Felix, Perez, Polanco, Rodriguez,

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<sup>17</sup> This allegation is pled under complaint ¶¶5 and 7.

<sup>18</sup> The complaint, as said, lists him as Ariel Batista.

<sup>19</sup> The complaint, as said, lists him as Andres Vazquez-Martinez.



Santana, Valdiviezo, Vasquez and Veloz full reinstatement to their former jobs, unless this has already been done, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority rights or any other rights or privileges previously enjoyed. It must make them whole for any loss of earnings and other benefits suffered as a result of the unlawful termination of their employment on August 3, 2020. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest compounded daily as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010). Additionally, it must compensate them for any adverse tax consequences of receiving a lump-sum backpay award, and file with the Regional Director a report allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016). It must compensate them for their search-for-work and interim employment expenses, regardless of whether those expenses exceed interim earnings. *King Soopers, Inc.*, 364 NLRB No. 93 (2016). The search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest compounded daily as prescribed in *New Horizons*, supra, and *Kentucky River Medical Center*, supra. It shall also remove from its files any references to their unlawful August 3, 2020 terminations, and notify them in writing in English and Spanish that this has been done and that this action will not be used against them in any way. Finally, it shall post the attached notice in English and Spanish in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>20</sup>

### ORDER

Serta Simmons Bedding, LLC, Hazleton, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Threatening to fire employees for engaging in protected concerted activities and, thereafter, informing them that they are fired because of their protected concerted activities.

b. Firing or otherwise discriminating against its employees for engaging in protected concerted activities.

c. Summoning the police to have employees removed from the plant for engaging in protected concerted activities.

d. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.

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<sup>20</sup> If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the Act's policies

a. Within 14 days from the date of the Board's order, offer Batista, Basilio, Beato, Bernard, De La Cruz, Felix, Perez, Polanco, Rodriguez, Santana, Valdiviezo, Vasquez and Veloz full reinstatement to their former job, unless this has already been done, or, if those jobs no longer exists, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.<sup>21</sup>

b. Make Batista, Basilio, Beato, Bernard, De La Cruz, Felix, Perez, Polanco, Rodriguez, Santana, Valdiviezo, Vasquez and Veloz whole for any loss of earnings and benefits suffered as a result of their unlawful terminations on August 3, 2020, in the manner set forth in the remedy section above.

c. Make Batista, Basilio, Beato, Bernard, De La Cruz, Felix, Perez, Polanco, Rodriguez, Santana, Valdiviezo, Vasquez and Veloz whole for their reasonable search-for-work and interim employment expenses, in the manner set forth in the remedy section above.

d. Compensate Batista, Basilio, Beato, Bernard, De La Cruz, Felix, Perez, Polanco, Rodriguez, Santana, Valdiviezo, Vasquez and Veloz for the adverse tax consequences, if any, of receiving a lumpsum backpay award, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

e. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of the Board's order.

f. Within 14 days of the date of the Board's order, remove from its files any reference to the unlawful August 3, 2020 terminations of Batista, Basilio, Beato, Bernard, De La Cruz, Felix, Perez, Polanco, Rodriguez, Santana, Valdiviezo, Vasquez and Veloz, and within 3 days thereafter, notify them in writing in English and Spanish that this has been done and that those actions will not be used against them in any way.

g. Within 14 days after service by the Region, post at its Hazleton, Pennsylvania facility the attached notice marked "Appendix" in English and Spanish.<sup>22</sup> Copies of the notice, on

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<sup>21</sup> The parties stipulated that Serta made unconditional offers of reinstatement to Batista, Basilio, Bernard, De La Cruz, Perez, Rodriguez, Vasquez and Veloz, and that, on May 24, 2021, Batista, De La Cruz, Perez and Vasquez returned. (JT Exh. 1). Their stipulation is unclear, however, regarding whether they were offered something less than full reinstatement to their former jobs or substantially equivalent jobs, without prejudice to their seniority or any other rights or privileges previously enjoyed. These matters can, if necessary, be resolved during the compliance phase.

<sup>22</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading

forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 3, 2020.

h. Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated Washington, D.C. December 17, 2021



**Robert A. Ringler**  
Administrative Law Judge

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"Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX**

**NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** threaten to fire employees for collectively seeking a raise and, thereafter, tell them that they are fired because they collectively sought this raise.

**WE WILL NOT** fire or otherwise discriminate against our employees for collectively seeking a wage raise or for engaging in other protected concerted activities.

**WE WILL NOT** call the police to have our employees removed from the plant because they collectively sought a wage raises or engaged in other protected concerted activities.

**WE WILL NOT** in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** offer Antolin Batista, Antonio Basilio, William Beato, Wilson Bernard, Felisberto De La Cruz, Severino Felix, Roberto Perez, Felipe Polanco, Yanira Rodriguez, Juan Santana, Bolivar Valdiviezo, Andres Vasquez, and Maximo Veloz full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

**WE WILL** make Antolin Batista, Antonio Basilio, William Beato, Wilson Bernard, Felisberto De La Cruz, Severino Felix, Roberto Perez, Felipe Polanco, Yanira Rodriguez, Juan Santana, Bolivar Valdiviezo, Andres Vasquez, and Maximo Veloz whole for any loss of earnings and benefits suffered as a result of their unlawful August 3, 2020 firings.

**WE WILL** make Antolin Batista, Antonio Basilio, William Beato, Wilson Bernard, Felisberto De La Cruz, Severino Felix, Roberto Perez, Felipe Polanco, Yanira Rodriguez, Juan Santana, Bolivar Valdiviezo, Andres Vasquez, and Maximo Veloz whole for their reasonable search-for-work and interim employment expenses.

**WE WILL** compensate Antolin Batista, Antonio Basilio, William Beato, Wilson Bernard, Felisberto De La Cruz, Severino Felix, Roberto Perez, Felipe Polanco, Yanira Rodriguez, Juan Santana, Bolivar Valdiviezo, Andres Vasquez, and Maximo Veloz for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Board's Regional Director a report allocating the backpay award to the appropriate calendar year.

**WE WILL** remove from our files any reference to the unlawful August 3, 2020 terminations of Antolin Batista, Antonio Basilio, William Beato, Wilson Bernard, Felisberto De La Cruz, Severino Felix, Roberto Perez, Felipe Polanco, Yanira Rodriguez, Juan Santana, Bolivar Valdiviezo, Andres Vasquez, and Maximo Veloz and notify them in writing that this has been done and that it will not be used against them in any way.

**SERTA SIMMONS BEDDING, LLC,**  
**(Employer)**

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

Regional Office 04 - Philadelphia, PA  
100 East Penn Square, Suite 403  
Philadelphia, PA 19107-6293  
Tel: (215) 597-7601  
Fax: (215) 597-7658  
8:30am - 5:00pm ET

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/04-CA-266838](http://www.nlrb.gov/case/04-CA-266838) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING  
AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL.  
ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE  
DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (215) 597-5354.